IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1465 of 1996

Rajamanickam .. Appellant/Defendant

Versus

Ramayi .. Respondent/Plaintiff

This second appeal has been filed against the judgment and decree, dated 1.7.1996, in A.S.No.5 of 1996, before the Sub-Court, Bhavani, preferred against the judgment and decree, dated 27.3.1995, in O.S.No.1 of 1988, before the District Munsif Court, Bhavani.

For Appellant : Mr.A.Nilaphar for
M/s.S.Venkateswaran

For Respondent : Mrs.Mythilisuresh
for M/s.Sarvabhauman Associates

J U D G M E N T

The second appeal has been filed against the judgment and decree, dated 1.7.1996, made in A.S.No.5 of 1996, on the file of the Sub-Court, Bhavani, confirming the judgment and decree, dated 27.3.1985, made in O.S.No.1 of 1988, on the file of the District Munsif Court, Bhavani.

2. The defendant in the suit O.S.No.1 of 1988, is the appellant in the present second appeal. The plaintiff had filed the suit in O.S.No.1 of 1988, on the file of the District Munsif Court, Bhavani, praying for a decree of declaration of title, possession and for past and future mesne profits.

3. The brief facts of the case, as stated by the plaintiff, are as follows:

The plaintiff is the daughter of one Nadupalaniammal. On 8.3.1956, the said Nadupalaniammal had purchased the suit properties from one Chinnapalaniammal. On 19.4.1973, the plaintiff's mother, Nadupalaniammal, had executed a registered settlement deed in favour of the plaintiff. The defendant had entered into possession of the suit properties as a tenant

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of the plaintiff's mother in the year, 1973. The monthly rent payable by the defendant was Rs.25/-. The defendant and the plaintiff's brother Chinna Gounder were friends. On 10.3.1973, the plaintiff's mother and

Chinna Gounder had executed an agreement to sell the suit properties to the defendant. The defendant had filed a suit in O.S.No.1101 of 1973, on the file of the District Munsif Court, Erode, praying for the relief of specific performance of the alleged agreement, dated 10.3.1973. In the said suit, the plaintiff's, mother Nadupalaniammal was the first defendant, the plaintiff's brother Chinna Gounder was the second defendant and the plaintiff was the third defendant.

4. The suit in O.S.No.1101 of 1973, on the file of the District Munsif Court, Erode, was decreed, on 5.9.1975. The plaintiff and her mother had filed an appeal in A.S.No.257 of 1975, before the District Court, Erode. Later on, the said appeal had been transferred to the Subordinate Judge, Erode, and renumbered as A.S.No.128 of 1976. The appellate Court by its judgment and decree, dated 1.3.1977, had allowed the appeal holding that the alleged agreement of sale, dated 10.3.1973, set up by the defendant was not true and valid and that the settlement deed, dated 19.4.1973, was true and valid and binding on the defendant. The defendant had filed a second appeal before the High Court at Madras in S.A.No.972 of 1978. The said second appeal had been dismissed by the High Court at Madras by its judgment and decree, dated 10.2.1982. The plaintiff is the owner of the suit properties.

5. The plaintiff had issued a notice to the defendant for recovery of possession. However, the defendant had issued a reply notice claiming title over the suit properties by adverse possession. The defendant does not have any title by adverse possession as claimed by him. The defendant had again filed a second appeal before the High Court at Madras. The defendant had not paid any rent with regard to the suit properties and the defendant has no title by adverse possession. When the title to the suit properties is vested with the plaintiff, the defendant cannot claim adverse possession. Therefore, the plaintiff had claimed damages for use and occupation for a period of three years prior to the filing of the suit at the rate of Rs.25/- per month and that the plaintiff is also entitled to mesne profits from the date of the suit till the delivery of possession.

6. The averments in the written statement filed by the defendant are as follows:

The claims made by the plaintiff are incorrect. There is no cause of action for the suit and hence the suit is to be dismissed with costs. It was stated that the District Munsif Court has no jurisdiction to entertain the suit. It was also stated that the claim of the plaintiff that the defendant entered into possession of the suit property as a tenant in the

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year, 1973 on a monthly rent of Rs.25/- under the plaintiff's mother is totally false. The defendant was at no time the tenant under the plaintiff's mother Nadupalaniammal. The defendant is the absolute owner of the suit property and is in uninterrupted, continuous and exclusive possession and enjoyment of the suit property from the month of March, 1973, with the knowledge of the plaintiff's mother Nadupalaniammal, the plaintiff and her brother Chinna Gounder.

7. The defendant has spent over Rs.10,000/- to repair the suit house. It is incorrect to claim that the defendant and the plaintiff's brother were friends.

8. It has been further stated that the defendant is willing to hand over possession of the property to the plaintiff on payment of Rs.10,000/- spent by the defendant in repairing the suit house. The defendant had sent a reply to the notice given by the plaintiff, on 9.1.1986. The defendant had not entered into any tenancy agreement with the plaintiff and her mother. The plaintiff is not entitled to any declaration of title to the suit properties. The suit is barred by limitation. There is no cause of action for the suit and the cause of action stated in the suit is incorrect. The plaintiff is not entitled to any relief. Hence, the suit is to be dismissed with costs.

9. Based on the rival claims made on behalf of the plaintiff as well as the defendant, the trial Court had framed the following issues for consideration:

(1) Is the plaintiff entitled to get the relief of declaration with regard to the suit properties?

(2) Whether the defendant has to execute a sale of the suit properties in favour of the plaintiff?

(3) Is the plaintiff entitled to get the mesne profits for three years as claimed by her and also to get the future mesne profits?

(4) Is the amount of mesne profits correct?

(5) Whether the defendant is the absolute owner of the suit properties?

(6) Whether the defendant is bound by the judgment and decree of the Sub-Court, Erode, in A.S.No.128 of 1976 and of the High Court at Madras in S.A.No.972 of 1978?

(7) Whether the defendant has spent Rs.10,000/- for the suit property?

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(8) Whether the plaintiff has to give possession to the defendant by way of adverse possession?

(9) Whether the suit is barred by limitation?

(10) To what other relief the plaintiff is entitled to?

10. Based on the settlement deed, dated 19.4.1973, marked as Exhibit A.1 and based on the oral and documentary evidence available, the trial Court had come to the conclusion that the suit properties had originally belonged to the plaintiff's mother Nadupalaniammal. It was found that the plaintiff's mother had executed a settlement deed, dated 19.4.1973, with regard to the suit properties in favour of the plaintiff. The suit property has been described as the separate properties of the plaintiff's mother, which had been purchased by her, on 8.3.1956, and has been in her possession and enjoyment ever since. It has been stated in the settlement deed that the suit property had been executed by the plaintiff's mother in favour of the plaintiff due to love and affection and without receiving any other benefit or consideration.

11. It had been stated before the trial Court that after the settlement deed, dated 19.4.1973, the plaintiff had permitted the defendant to stay in the suit house. It was found that thereafter the defendant had filed a suit praying for specific performance before the District Munsif Court, Erode, stating that the plaintiff's mother had executed a sale agreement agreeing to sell the suit property to the defendant. The suit had been decreed in favour of the defendant as seen from Exhibit A.2. Against the judgment and decree passed by the District Munsif Court, Erode, the plaintiff's mother had filed an appeal in A.S.No.257 of 1975, before the District Court, Erode. Later, it was transferred to the Subordinate Court, Erode, and numbered as A.S.No.128 of 1976. The said appeal had been decided in favour of the plaintiff and her mother holding that the alleged agreement of sale, dated 10.3.1973, set up by the defendant was not true and valid. The defendant had filed a second appeal in S.A.No.972 of 1978, before the High Court at Madras challenging the judgment and decree of the Subordinate Court, Erode. The High Court of Judicature at Madras, had confirmed the decision of the Subordinate Court, Erode, as seen from Exhibits A.4 and A.5. Thus, it was seen that the sale agreement, dated 10.3.1973, entered into between the plaintiff's mother and the defendant was not valid in law. Hence, the claim of the defendant that the suit property belonged to him in accordance with the said agreement of sale cannot be accepted. Therefore, the trial Court had found that the claim of the defendant that he is entitled to the suit property based on the sale agreement cannot be accepted.

12. The trial Court had found that the plaintiff had given a notice marked as Exhibit A.6 asking the defendant to hand over possession of the suit property. The defendant had issued a reply notice marked as Exhibit

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A.9 in which the defendant had stated that the suit property belonged to him and that he is in occupation of the suit property as a tenant. It had been further stated that the defendant has spent Rs.10,000/- to carryout the repairs in the suit properties. Further, the defendant had also claimed title in the suit property by adverse possession. However, the trial Court had found that there was no basis on which the defendant had claimed such title. Further, there was no documentary evidence in support of the claim of the defendant that he was in possession of the suit property.

13. From the oral evidence of the defendant, the trial Court had found that the defendant was living in Erode in two of the ten houses belonging to him. It was further found that the defendant in his evidence had stated that he did not know the measurements of the suit house in question and that there is no electricity connection for the said suit house and that the house, which is claimed by the defendant to be in his possession and enjoyment, is very old and that it is not fit for occupation.

14. The trial Court had also come to the finding that the claim of the defendant that he had spent Rs.10,000/- on repairing the house was incorrect. If the said amount had been spent on carrying out the repairs on the house, it could not have been in such a dilapidated condition being unfit for occupation. The trial Court had also found that the defendant had not shown any proof, by way of evidence, in support of his claim that he is in adverse possession of the suit property. Since the defendant had filed the suit in O.S.No.1101 of 1973 on the file of the District Munsif Court, Erode, and the dispute with regard to the title and ownership of the suit house has been pending before the Courts of law, the defendant cannot claim adverse possession by counting the period during which such litigation was pending.

15. Based on Exhibit A.1, the trial Court had found that the suit house belonged to the mother of the plaintiff and that it was given to the plaintiff by way of settlement deed. Further, decisions of the High Court at Madras has confirmed that the suit property belonged to the plaintiff and therefore, it could be held that she is entitled to the relief of declaration as prayed for. Consequently, the plaintiff is also entitled for the relief of recovery of possession.

16. The trial Court had also held that the plaintiff had no other house to live in except the one in the suit property, whereas the defendant had 10 houses in Erode. Further, the defendant had not substantiated his claims by way of evidence to show that he was in adverse possession of the suit property to claim title over the said suit property. The trial Court had also found that there was no proof to show that the defendant had spent Rs.10,000/- for carrying out the repairs as claimed by him. In conclusion, the trial Court had declared that the suit property belonged to the plaintiff and had also held that the defendant

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was to hand over the vacant possession of the suit property to the plaintiff. Thus, the trial Court had decreed the suit as prayed for by the plaintiff and it had directed the defendant to hand over possession of this suit property to the plaintiff, within one month from the date of the decree. Further, it had directed the defendant to pay damages at a rate of Rs.25/- per month, for three years prior to the filing of the suit. With regard to the claim of the plaintiff for mesne profits, it was held that the plaintiff can claim the same under Order 20 Rule 12 of the Civil Procedure Code by way of separate proceedings.

17. Aggrieved by the judgment and decree of the trial Court, dated 27.3.1995, made in O.S.No.1 of 1988, the defendant had filed an appeal before the Sub-Court, Bhavani.

18. Based on the averments made on behalf of the plaintiff as well as the defendant and relying on the records available, the lower appellate Court had framed the following point for consideration:

> "Whether the plaintiff has the right over the suit property as per the decision of the High Court, and if so, whether the defendant has to vacate the suit property? "

19. The lower appellate Court had found that the High Court of Judicature at Madras, had held in S.A.No.972 of 1978 that the defendant is a tenant as held by the lower appellate Court in A.S.No.128 of 1976. Further, it had been found that the suit property belonged to the plaintiff and that the defendant was not entitled to the relief of specific performance. Since the defendant has been held to be a tenant, the notice, which had been sent on behalf of the plaintiff describing the defendant as a trespasser, cannot be held to be causing serious damage to the claims of the plaintiff. In such circumstances, the lower appellate Court had confirmed the findings of the trial Court by its judgment and decree, dated 1.7.1996 made in A.S.No.5 of 1996. Aggrieved by the judgment and decree of the lower appellate Court, dated 1.7.1996, made in A.S.No.5 of 1996, the present second appeal has been filed before this Court on the various grounds raised in the grounds of appeal.

20. The second appeal had been admitted on the following substantial questions of law.

> "1. Whether the Courts below erred in not holding that the appellant has been in possession and enjoyment of the property and perfected title by adverse possession?
>
> 2. Are the decrees and judgments passed by the Courts below correct and sustainable in law?"

21. The learned counsel appearing on behalf of the appellant had contended that both the Courts below had erred in law in holding that the

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appellant/defendant is a tenant in the suit property and that he is not entitled to claim adverse possession with regard to the suit property. The Courts below had not considered the discrepancies in the claims made by the plaintiff in the notice issued by her marked as Exhibit B.1 and in her suit in O.S.No.1 of 1988.

22. The learned counsel appearing on behalf of the appellant had relied on the following decisions in support of her contentions:

22.1. The learned counsel appearing on behalf of the appellant had relied on the decision of this Court made in Fathuma and another Vs. K.S.Kadherkani (1995(2) L.W.705), to show that this Court can interfere with the concurrent findings of the Courts below in a second appeal filed under Section 100 of the Civil Procedure Code, if the findings arrived at by the Courts below are perverse.

22.2. In Thailammal Vs. Batumalai, (1965 (I) M.L.J.383), this Court has held that the suit was barred by limitation under Article 139 of the Limitation Act. The period of limitation began to run from 1935 when the lease came to an end by efflux of time. The plaintiffs' attempt to plead that he was a minor and he could bring the action within three years of attaining majority must fail, for, in 1935 he was not even born. His father R was alive when the lease came to an end and if he became entitled to the property by survivorship, time began to run against him in 1935 and once time begins to run it will not stop. That being so the suit brought beyond 12 years from 1935 stands clearly barred.

That a tenant is prevented from denying his landlord's title during the tenancy of the lease and cannot also deny that the landlord has title at the inception of the lease is a well-accepted position. But, when once the lease comes to an end by efflux of time merely because the tenant continues to be in possession of the land, the relationship of landlord and tenant can no longer subsist, and after the termination of the tenancy, the tenant's right to set up title hostile to the landlord does not appear to be negatived by any decided case.

22.3. In R.Kanthimathi and another Vs. Beatrice Xavier (2000) 9 SCC 339), the Supreme Court has held that any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when the appellants were inducted into tenancy it only means both agreed that their relationship was to be that of landlord and tenant. Later, when the landlord decided to sell this property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is what they intended. Once accepting such a change, their relationship of landlord-tenant ceases.

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23. Per contra, the learned counsel appearing on behalf of the respondent/plaintiff had contended that the claims made by the appellant/defendant are not sustainable in law and that the Courts below were right in coming to the conclusion that the suit property belonged to the respondent/plaintiff and that the appellant/defendant is not entitled to claim adverse possession.

24. The learned counsel appearing on behalf of the respondent/plaintiff had relied on the following decisions in support of her contentions.

24.1. In Bhura Mogiya and others Vs. Satish Pagariya and others (2001) 9 SCC 385), the supreme Court has held that admittedly, the defendants came into possession on the basis of agreement, which was a permissible possession. Once the defendants' possession was by virtue of an agreement it is not open to them to take a plea that they acquired title by adverse possession. Permissible possession cannot be converted into adverse possession unless it is proved that the person in possession asserted and acquired adverse title to the property to the knowledge of the true owner for a period of 12 years and above.

24.2. In Roop Singh (Dead) Through Lrs. Vs. Ram Singh (Dead) Through Lrs. (2000) 3 SCC 708), the Supreme Court has held that if the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession.

25. On analysing the records available before this Court, the case laws cited and based on the rival contentions of the learned counsels appearing on behalf of the appellant/defendant as well as the respondent/plaintiff, this Court is of the considered view that the Courts below have come to the right conclusion that the respondent/plaintiff is entitled to the suit property and that the appellant/defendant cannot claim title by adverse possession with regard to the suit property.

26. Further, it is seen that both the Courts below have rightly come to the conclusion that the appellant has not shown sufficient cause or proof to support his claims. No documentary or oral evidence has been made available to show that he was in actual possession of the suit property and that his possession was adverse to the plaintiff. It had also been found by the Courts below that since the dispute had started even during the year 1973, when the appellant had filed a suit in O.S.No.1101 of 1973, on the file of the District Munsif Court, Erode, claiming for the relief of specific performance. Pursuant to the said suit, this Court had held in S.A.No.972 of 1978, that the suit property belonged to the respondent and

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that the appellant was only a tenant in the suit property. In such circumstances, the claim of adverse possession by the appellant cannot be sustained. Thus, it is clear that the Courts below have come to the right conclusion by decreeing the suit of the as prayed for by the plaintiff. In such view of the matter, the second appeal stands dismissed confirming the judgment and decree of the Courts below. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Subordinate Jduge, Bhavani,
2. The District Munsif Court, Bhavani
3. The Recore Keeper, VR Section, High Court,Chennai.
+ One cc to M/s Sarvabhuman Associates Advocates SR 43674
+ One cc to Mr. R. Subramanian, Advocate sR 43634

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